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8 Attorneys for Defendants FLUENT, LLC,
9 served and f/k/a FLUENT, INC.; REWARD ZONE
10 USA, LLC; REWARDSFLOW LLC; AMERICAN PRIZE
11 CENTER, LLC; and MOHIT SINGLA

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15
16 MIRA BLANCHARD, an individual; RYAN) CASE NO.
17 COOPER, an individual; MARK DAVIS, an)
18 individual; CHANDRA GREENBERG, an) DEFENDANTS' NOTICE OF
19 individual; JAMES JOBE, an individual;) REMOVAL OF ACTION
20 DEBRA KOTTONG, an individual; OGEN)
21 LAMA, an individual; MARIA MARQUEZ, an)
22 individual; VANESSA POWERS, an) Complaint filed in San Francisco County
23 individual; and GAIL TAYLOR, an individual;) Superior Court September 16, 2016 (Case
24 Plaintiffs,) No. CGC 16-554299)
25 vs.)
26 FLUENT, INC., a Delaware corporation;)
27 REWARD ZONE USA, LLC, a Delaware)
28 limited liability company; REWARDS FLOW,)
29 LLC, a Delaware limited liability company;)
30 AMERICAN PRIZE CENTER, LLC, a)
31 Delaware limited liability company; MOHIT)
32 SINGLA, an individual; SAUPHTWARE INC.,)
33 a Nevada corporation; ADREACTION, a)
34 business of unknown formation; ANGLO)
35 IDITECH, a business of unknown formation;)
36 FORtANALYSIS8 DEVELOP, a business of)
37 unknown formation; CONCEPT NETWORK, a)
38 business of unknown formation; DIEGO)
39 RUFINO, an individual; PRISCILA)
40 AREKELIAN, an individual; ANDRES MARY,)
41 an individual; and DOES 1-1000;)
42 Defendants.)

Gordon Rees Scully Mansukhani, LLP
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San Francisco, CA 94111

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO PLAINTIFFS AND
 2 THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that Defendants FLUENT, LLC, served and f/k/a FLUENT,
 4 INC.; REWARD ZONE USA, LLC; REWARDSFLOW LLC; AMERICAN PRIZE CENTER,
 5 LLC; and MOHIT SINGLA (“Defendants”) hereby remove the state court action entitled *Mira*
 6 *Blanchard, et al. v. Fluent, Inc., et al.*, San Francisco County Superior Court, Case No. CGC 16-
 7 554299 (“the Action”) to this Court pursuant to 28 U.S.C. sections 1332, 1441, and 1446.

8 This Notice is based upon the original jurisdiction of the federal district court over the
 9 parties under 28 U.S.C. section 1332 based upon complete diversity of citizenship between
 10 plaintiffs and the “properly joined defendants.” As set forth herein, Defendant Andres Mary is
 11 an improper defendant, fraudulently joined to defeat diversity, and his alleged citizenship (which
 12 is alleged to be in California) should not be considered.

13 **I. REMOVAL JURISDICTION – Civil Local Rule 3-5(a)**

14 1. This action may be removed to this Court by the Defendant pursuant to the
 15 provisions of 28 U.S.C. section 1332, because, as set forth below, complete diversity exists
 16 among the plaintiffs and non-fraudulently joined defendants and the amount in controversy
 17 exceeds \$75,000, exclusive of interest and costs.

18 **II. RELEVANT PROCEDURAL FACTS REGARDING TIMING OF REMOVAL**

19 2. On September 16, 2016, Plaintiffs filed their Complaint in this case in the
 20 Superior Court of California, County of San Francisco. It was not served. On December 20,
 21 2016 plaintiffs filed a First Amended Complaint (“First Amended Complaint”).

22 3. Defendant Fluent, LLC f/k/a Fluent, Inc. (“Fluent”) was served as Fluent, Inc. by
 23 personal service on its agent for service of process, Mohit Singla, on March 6, 2017.

24 4. On February 14, 2017, Plaintiffs’ counsel purported to serve the First Amended
 25 Complaint on Defendants Reward Zone USA, LLC, Rewards Flow, LLC, American Prize
 26 Center, LLC, and Mohit Singla, along with a Summons, ADR Information packet, Notice of
 27 Case Management Conference, and Order Continuing CMC – all served via mail pursuant to
 28 California Code of Civil Procedure Section 415.40. As a result, service was effective on said

1 defendants 10 days after mailing, on February 24, 2017.

2 5. On March 22, 2017, Fluent timely removed this case alleging federal diversity
 3 jurisdiction (including allegations of the Plaintiffs' including of a sham defendant, Andres Mary,
 4 as a California citizen (he is actually from Argentina) presumably to avoid removal). *See*
 5 *Blanchard, et al. v. Fluent, Inc., et al.* Case No. 17-cv-01551-MMC, Dkt No.1. Each of the other
 6 removing defendants herein (Reward Zone USA, LLC, Rewards Flow, LLC, American Prize
 7 Center, LLC, And Mohit Singla) consented to removal at that time.¹ *Id.*, Dkt. Nos. 2-5. At the
 8 time of removal, and upon information and belief, no other defendant had been served. Based on
 9 service of the First Amended Complaint, removal was therefore timely under 28 U.S.C section
 10 1446(b)(1).

11 6. Following removal, Fluent filed its Answer in Case No. 17-cv-01551-MMC on
 12 March 29, 2017. Case No. 17-cv-01551-MMC, Dkt No.15. The very same day, another non-
 13 Fluent served defendant, Sauphtware, Inc., filed a Motion to Dismiss. *Id.*, Dkt. No. 14.
 14 Sauphtware, Inc. later filed a Consent to Removal on April 19, 2017. *Id.*, Dkt. No. 23.

15 7. On April 3, 2017, Plaintiffs filed a Motion to Remand – solely on the grounds that
 16 Mr. Mary was a proper defendant and California citizen, and that another served defendant,
 17 Sauphtware, Inc. had not consented to removal – even though the “non-consenting” defendant
 18 had already filed a responsive pleading in federal court. *See* Case No. 17-cv-01551-MMC, Dkt
 19 No.16.

20 8. Going beyond the scope of the remand motion, the District Court then issued an
 21 Order to Show Cause re Remand (“OSC”) on April 4, 2017 – directing the removing defendants
 22 to allege, by April 17, 2017, (along with an opposition to the Motion to Remand), the citizenship
 23 of *all* defendants – served and not served – to properly demonstrate that there was truly complete
 24 diversity. *See* Case No. 17-cv-01551-MMC, Dkt No. 18. Pursuant to Plaintiffs' and Fluent's
 25 Stipulation, the Court extended the deadline to May 8, 2017. *See Id.*, Dkt No.22.

26 9. On May 5, 2017, the parties filed a Stipulation for the filing of a Second
 27 Amended Complaint, which included additional plaintiffs and defendants. *See* Case No. 17-cv-

28 ¹ All removing defendants are collectively referred to herein as “Fluent.”

1 01551-MMC, Dkt No. 24. Due to an alleged lack of diversity given some of the new defendants,
 2 the parties further contemplated that, if the Second Amended Complaint were permitted to be
 3 filed in federal court, the Motion to Remand and OSC would be incomplete. *Ibid.* As such, on
 4 May 8, 2017, the parties also filed a Stipulation to further continue the deadline for responding to
 5 the motion and OSC. *Id.*, Dkt.No. 25.

6 10. Fluent's intent was to address the purported lack of diversity, as well as the
 7 impropriety of additional parties in its responsive pleading and the opposition to any amended
 8 remand motion. *See Declaration of Andrew D. Castricone, Esq.* ¶7. Fluent's position that
 9 additional defendants were being added simply to avoid diversity and that the amended
 10 complaint should not survive. *Ibid.*, *See, e.g. Desert Empire Bank v. Insurance Co. of No.*
 11 *America* 623 F.2d 1371, 1376-1377 (9th Cir. 1980); *Clinco v. Roberts* 41 F.Supp.2d 1080, 1086
 12 (CD Cal.1999); and *Winner's Circle of Las Vegas, Inc. v. AMI-Franchising, Inc.* (D NV 1996)
 13 916 F.Supp. 1024, 1025 (D NV 1996).

14 11. However, on May 11, 2017, the Court denied to enter an order on the stipulations,
 15 finding that diversity jurisdiction "is determined (and must exist) as of the time the complaint is
 16 filed and removal is effected." *See Case No. 17-cv-01551-MMC*, Dkt No. 26. However, the
 17 Court recognized Fluent's likely reliance on the stipulation, and further extended Fluent's
 18 responses to the motion and OSC until May 18, 2017. *Ibid.*

19 12. Despite the District Court's indication that it did not want to address any possible
 20 changes to the pleadings pending a determination of jurisdiction, Plaintiffs nevertheless filed
 21 **three motions** on May 12, 2017 - a Motion to Substitute Name of Defendant, a Motion to
 22 Correct Name of Doe Defendants, and an Amended Motion to Remand. *See Case No. 17-cv-*
 23 01551-MMC, Dkt Nos. 27, 28, 29. On the very same day, the Court entered an Order denying
 24 all of the motions, without prejudice, until jurisdiction had been resolved. *Id.*, Dkt. No. 30.

25 13. In an almost immediate response, on May 15, 2017, and to clearly skirt the
 26 Court's ruling, Plaintiffs' counsel then filed a separate action in the California Superior Court in
 27 and for the County of San Francisco, *Duncan, et al. v. Fluent, LLC, et al.* ("*Duncan*"), SFSC
 28 Case No. CGC-17-558932, naming the very same plaintiffs and defendants they had

1 unsuccessfully tried to add to the operative complaint in the District Court just three days earlier.
 2 See Castricone Decl., Ex. "B." To date, the *Duncan* matter has not been served, Plaintiffs'
 3 counsel has never discussed the Duncan case with Fluent's counsel. *Id.* at ¶7. The only thing the
 4 *Duncan* plaintiffs have done is to file a Request for Dismissal, without prejudice, of one of the
 5 named plaintiffs, Bunny Segal. *Id.* at ¶7-8; Ex. "C." The Request for Dismissal, the reason for
 6 which is unknown, was filed on June 26, 2017. *Ibid.*

7 14. On May 18, 2017, Fluent filed a lengthy Opposition and Response to the OSC.
 8 See Case No. 17-cv-01551-MMC, Dkt Nos. 31-35. In addition to submitting evidence regarding
 9 Mr. Mary, the Sauphtware, Inc. consent issue, and further information on the citizenship of the
 10 served defendants, the papers included voluminous evidence of Fluent's investigation of the
 11 **named but non-served** defendants and the domain names at issue, and identified various
 12 connected non-parties (including Experions.com, LLC) to establish complete diversity. *Ibid.*
 13 With respect to Experions.com, LLC, Fluent noted that it had, at the time, been unable to
 14 confirm the citizenship of Experions.com, LLC's individual members (and requested more time
 15 to so so). *Ibid.*

16 15. In their May 25, 2017 reply papers, Plaintiffs focused on Mr. Mary, Sauphtware,
 17 Inc., and Fluent's arguably vague description of unserved defendant, AdReaction's, relationship
 18 to a Canadian corporation. See Case No. 17-cv-01551-MMC, Dkt Nos. 37-38.

19 16. The matter was taken under submission without oral argument. The Court
 20 remanded the action on June 8, 2017 on narrow issues regarding the failure to completely
 21 address Experions.com, LLC's citizenship and, in a footnote, the vague allegation related to
 22 AdReaction. Case No. 17-cv-01551-MMC, Dkt No.47. Again, the Court expressly noted that,
 23 within 30 days of receipt of evidence of complete diversity, Fluent could seek to remove again.
 24 *Ibid.* See Castricone Decl., Ex. "A."

25 17. Since the time of the Order, Fluent and its counsel have been seeking additional
 26 evidence regarding the narrow scope of the basis for remand. In doing so, after securing
 27 evidence between July 28, 2017 and August 7, 2017, and as set forth in the supporting
 28 declarations filed concurrently herein, as well as the evidence submitted in Case No. 17-cv-

1 01551-MMC, it is respectfully requested that Fluent has established complete diversity of
 2 citizenship.

3 18. Plaintiffs are presently seeking to amend the operative complaint in this matter to
 4 add the parties in the already pending and separate *Duncan* matter – presumably in an effort to
 5 destroy diversity here.

6 **III. A PROPER BASIS EXISTS FOR REMOVAL**

7 **A. There is Complete Diversity Among the Properly Joined Defendants**

8 19. The removing Defendant is informed and believes, based upon Plaintiffs'
 9 operative First Amended Complaint, that Plaintiffs were, and still are, citizens of the State of
 10 California. *See* First Amended Complaint, attached hereto as part of Ex. "A".

11 20. All of the defendants, other than Andres Mary, are alleged to be non-California
 12 citizens. Mr. Mary is alleged to have sent at least 6 emails at issue and is also alleged to be a
 13 California citizen, based solely on an alleged virtual mailbox purportedly connected with his
 14 name located in San Francisco, California. However, upon information and belief, Mr. Mary
 15 was and is, at all relevant times, a developer, whose citizenship, residency, and principal place of
 16 business is located within Argentina. Upon information and belief, Mr. Mary, as a developer,
 17 would also not have been the person/entity sending the email from the domains alleged in the
 18 First Amended Complaint. As such, for purposes of removal, Andres Mary's citizenship should
 19 be disregarded. Mr. Mary's citizenship was fully addressed in Fluent's Opposition/Response to
 20 the Motion to Remand and Order to Show Cause in Case No. CGC-17-558932, Dkt. Nos. 31-35.

21 21. Served defendant Sauphtware, Inc., which consented to federal jurisdiction
 22 previously, provided Fluent with a renewed consent to removal on August 4, 2017; the consent is
 23 being filed concurrently herein.

24 22. Upon information and belief, the remaining defendants other than the Fluent have
 25 been not served and/or have not yet appeared or filed any papers in the state court action. Upon
 26 service, if effectuated, consent to removal of the other defendants will be requested.

27 **B. The Amount in Controversy Exceeds \$75,000, Exclusive of Interest and Costs**

28 23. The First Amended Complaint's prayer for relief seeks damages of at least

1 \$1,265,000.

2 **IV. ALL PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED**

3 24. The Summons on First Amended Complaint, First Amended Complaint, ADR
 4 Information Packet, Notice of Case Management Conference, and Order Continuing Case
 5 Management Conference (as well as a recently received second Order Continuing Case
 6 Management Conference) were served on Fluent, LLC via personal service on March 6, 2017,
 7 and on the remaining Fluent defendants in this matter via mail on February 14, 2017 pursuant to
 8 California Code of Civil Procedure section 415.40, which makes service effective February 24,
 9 2017 as to those defendants.

10 25. Following service, no defendants have filed any responsive pleading in the state
 11 court action. Fluent filed an Answer in Case No. CGC-17-558932 on March 29, 2017.
 12 Sauphtware, Inc. filed a Motion to Dismiss on the same date. The motion was never ruled upon.

13 26. Per the June 8, 2017 Order in Case No. CGC-17-558932, this notice is filed
 14 within 30 days after receipt of “a copy of an amended pleading, motion, order or other paper
 15 from which it may first be ascertained that the case is one which is or has become removable.”
 16 Thus, removal is timely and proper pursuant to 28 U.S.C. section 1446(b).

17 27. As required by 28 U.S.C. section 1446(a), copies of “all process, pleadings, and
 18 orders served upon such defendant[s]” regarding the state court action are attached to this Notice
 19 of Removal (along with the operative complaint) as Exhibit “A.” The documents comprising
 20 Exhibit “A” are: Complaint; Summons on First Amended Complaint; First Amended Complaint;
 21 ADR Information packet; Notice of Case Management Conference; Order Continuing CMC; the
 22 second Order Continuing Case Management Conference; Proofs of Service of Summons on First
 23 Amended Complaint; Order Taking CMC Off Calendar; Fluent’s Opposition to Plaintiffs’
 24 Motion to Amend; USDC 06-09-2017 Letter to San Francisco Court re Remand; Plaintiffs’
 25 Motion to Amend the Complaint; Corrected Motion to Amend Documents; Fluent’s opposition
 26 to the Motion to Amend the Complaint; and Plaintiffs’ Reply re the Motion to Amend. The
 27 documents are attached as Exhibit A, Parts 1-4.

28 28. A copy of this Notice of Removal, without exhibits, is being filed with the Clerk

1 of the Superior Court of the State of California in and for the County of San Francisco.

2 29. A copy of this Notice of Removal, without exhibits, and copies of each consent to
3 removal and supporting declarations are being served on Plaintiffs' counsel.

4 **V. INTRADISTRICT ASSIGNMENT**

5 30. Pursuant to Civil Local Rule 3-5(b), this identifies the basis for assignment to a
6 particular location or division of the Court pursuant to Civil Local Rule 3-2 (c). Pursuant to
7 Civil Local Rule 3-2 (c), all civil actions shall be assigned to a courthouse serving the County in
8 which the action arises. Under Civil Local Rule 3-2 (d), actions such as this, arising in the
9 County of Alameda, may be assigned to San Francisco or Oakland. This matter should therefore
10 be assigned to the San Francisco or Oakland Division pursuant to Civil Local Rule 3-2(c), (d).

11 **VI. CONCLUSION/PRAYER**

12 For the reasons describe above, Plaintiffs' claims are properly removable under
13 28 U.S.C. sections 1332, 1441.

14 WHEREFORE, Defendant prays that the State Court Action be removed to this Court
15 and this Court accept jurisdiction of this action in its entirety and henceforth that this action be
16 placed on the docket of this Court for further proceedings, the same as if this action had been
17 originally filed in this Court.

18 Defendant requests a jury trial.

19 Dated: August 7, 2017

GORDON & REES SCULLY MANSUKHANI, LLP

20 
21 By _____
22

23 Andrew D. Castricone
24 Attorneys for Defendants FLUENT, LLC, served and f/k/a
25 FLUENT, INC.; REWARD ZONE USA, LLC;
26 REWARDSFLOW LLC; AMERICAN PRIZE CENTER,
27 LLC; and MOHIT SINGLA
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